

December 17, 2021

VIA ECF

The Honorable Taryn A. Merkl, USMJ
United States District Court for the Eastern District of New York
225 Cadman Plaza East, Room 324N
Brooklyn, NY 11201

Re: Tri-State Surgical Supply & Equipment Ltd. v. McKinnon, et al.
1:21-cv-00333-PKC-TAM

Dear Judge Merkl:

The Plaintiff in the above-captioned case submits this letter in accordance with the Court's November 15, 2021 Order. We were unable to obtain Defendants' position but have directly quoted his last communication, as evidenced by the enclosed e-mail chain.

The Order also provided, *inter alia*, that, "Defendants are directed to update their written discovery responses by 11/30/2021. Defendants are directed to provide an affidavit regarding their efforts to search their records for responsive information, including but not limited to the search of any electronically stored information, for emails, WhatsApp messages, and other documents and/or evidence that are responsive to Plaintiff's discovery requests by 12/6/2021."

PLAINTIFF'S POSITION

Defendants violated the terms of the Order by failing to comply with its express terms.

In response to Plaintiff's counsel's phone call to Defendants' counsel to try to resolve Defendants' discovery failures, Plaintiffs received a deficient affidavit made by Defendant McKinnon. The affidavit only refers to himself and does not address co-defendants' efforts. Plaintiff asked for same and was not provided anything on their behalf. Therefore, they should be held in contempt outright.

Furthermore, Mr. McKinnon claims in his affidavit that he has no e-mails, WhatsApp messages, or any other documents with "persons or entities involved," which is questionable, but otherwise is not in compliance with the Order. Plaintiff's Requests numbers 4, 5, 6, and 7 seek documents and records relating to buying and selling of similar goods with non-parties and therefore, he is improperly withholding same and should likewise be held in contempt.

Notwithstanding the below, to date, Defendants GoCloud and Das have not provided an affidavit and neither of the three Defendants have produced the outstanding discovery documents as required.

DEFENDANTS' POSITION

*"i should have it any time
also I got some more discovery material that I will send over
It was provided along with the affidavit
but it is a bit bulkier
I made a plea to include any paper or communications if it can at all possibly be related to this
action"*

Thank you for your consideration.

Respectfully,

KORSINSKY & KLEIN, LLP

By: /s/Michael Korsinsky
Michael Korsinsky
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Mailing Address:
P.O. Box 298
Bethpage, NY 11714
johnmstravato@gmail.com
Attorney for Defendants

From: [Marc Illish](#)
To: [John Stravato](#)
Cc: [Michael Korsinsky](#)
Subject: RE: Affidavit re Discovery
Date: Friday, December 17, 2021 1:01:00 PM
Importance: High

You have not responded to my e-mail below or my phone call.

As indicated, we must leave early due to Sabbath observance.

If we do not hear from you soon, we will quote your last e-mail as defendants' position.

MARC ILLISH, ESQ.



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From: Marc Illish
Sent: Friday, December 17, 2021 11:10 AM
To: John Stravato <johnmstravato@gmail.com>
Cc: Michael Korsinsky <mk@kklawfirm.com>
Subject: RE: Affidavit re Discovery
Importance: High

Please see attached draft letter for your input.

Please return with your client's position by 12:30 p.m. (EST) for review and filing.

MARC ILLISH, ESQ.



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From: John Stravato <johnmstravato@gmail.com>

Sent: Friday, December 17, 2021 1:01 AM

To: Marc Illish <mi@kklawfirm.com>

Subject: Re: Affidavit re Discovery

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but it is a bit bulkier

I made a plea to include any paper or communications if it can
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**John M. Stravato
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On Thu, Dec 16, 2021 at 5:38 PM Marc Illish <mi@kklawfirm.com> wrote:

Dear Mr. Stravato,

The Court ordered that, “Defendants are directed to update their written discovery responses by 11/30/2021. Defendants are directed to provide an affidavit regarding their efforts to search their records for responsive information, including but not limited to the search of any electronically stored information, for emails, WhatsApp messages, and other documents and/or evidence that are responsive to Plaintiff's discovery requests by 12/6/2021.”

Defendants violated the terms of the Order. In response to our phone call to you to try to resolve Defendants’ discovery failures, we received Mr. McKinnon’s deficient affidavit. The affidavit only refers to himself and does not address co-defendants’ efforts. We asked for same and you have not provided anything on their behalf. Therefore, they should be held in contempt outright.

Furthermore, Mr. McKinnon’s claim that has no e-mails, WhatsApp messages, or any other documents with “persons or entities involved” is surprising to say the least, but otherwise is not in compliance with the Order. Plaintiff’s Requests numbers 4, 5, 6, and 7 seek documents and records relating to buying and selling of the goods with non-parties and therefore, he is improperly withholding same and should likewise be held in contempt.

Accordingly, the appropriate remedies will be sought.

MARC ILLISH, ESQ.



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From: John Stravato <johnmstravato@gmail.com>

Sent: Tuesday, December 14, 2021 12:53 PM

To: Michael Korsinsky <mk@kklawfirm.com>

Subject: Affidavit re Discovery